

MINUTES
SCOTTSDALE CITY COUNCIL
CITY COUNCIL MEETING
Wednesday, July 2, 2003

The Kiva
City Hall
Scottsdale, Arizona

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CALL TO ORDER (IN CITY HALL KIVA FORUM)

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Wednesday, July 2, 2003 in the Kiva, City Hall, at 5:12 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor Ned O'Hearn
Council Members David Ortega, Tom Silverman, Robert Littlefield, Wayne Ecton,
and Cynthia Lukas

Also Present: City Manager Jan Dolan
City Attorney David Pennartz
City Clerk Sonia Robertson

Public Comment

William Crawford, 6442 E. Camelback Road, urged Council to place the issue of districting on the ballot for voters. He cautioned that the issue would be brought forward as an initiative if Council doesn't place it on the ballot now.

Sharon Morgan, 7304 E. McKinley Street, announced that the leadership of Los Arcos Neighborhood Coalition and the Scottsdale Coalition have decided to form a new group in southern Scottsdale once the Los Arcos issue is settled. The new group would work together for a better future in south Scottsdale.

Tim Montgomery, (no address given), pointed out that Kierland Commons is located in Phoenix. He explained that volunteers have spearheaded a program entitled "Adopt-A-Road" which will help the city differentiate itself from Phoenix through signage. He also noted that there is an effort underway to remove two zip codes from Scottsdale since the properties are physically located in Phoenix.

Minutes

SPECIAL MEETINGS

REGULAR MEETINGS

EXECUTIVE SESSIONS

June 16, 2003

June 17, 2003

COUNCILMAN SILVERMAN MOVED TO APPROVE THE REGULAR MEETING MINUTES FOR JUNE 16, 2003 AND JUNE 17, 2003. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

1. Sugo Pastaria Winebar Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for an existing restaurant formerly operating under the business name Zanzibar.

Location: 4151 N. Marshall Way, Suites 8, 9, & 10

Reference: 23-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review and Permit Services Director, 480-312-7619, Jfisher@ScottsdaleAZ.Gov

2. Nantucket Seafood & Raw Bar Liquor License

Request: Consider forward a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for a new restaurant location.

Location: 7000 E. Shea Blvd, Suite 125

Reference: 33-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review and Permit Services Director, 480-312-7619, Jfisher@ScottsdaleAZ.Gov

3. Bar 74 Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a person and location transfer of a series 6 (bar) State liquor license under the business name Kamikazi Coast.

Location: 7443 E. 6th Avenue

Reference: 34-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review and Permit Services Director, 480-312-7619, E-mail: Jfisher@ScottsdaleAZ.Gov

4. Taco 'Te Beach Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for the former Hola Café, which also operated with a series 12 (restaurant) license.

Location: 2515 N. Scottsdale Rd. #2-3-4

Reference: 35-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review and Permit Services Director, 480-312-7619, E-mail: Jfisher@ScottsdaleAZ.Gov

5. Homewood Suites Hotel Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a person transfer of a series 7 (beer & wine bar) State liquor license for an existing hotel location.

Location: 9880 N. Scottsdale Road

Reference: 36-LL-2003

Staff Contact: Jeff Fisher, Plan Review and Permit Services Director, 480-312-7619, E-mail: Jfisher@ScottsdaleAZ.Gov

6. D'atri's at the Scottsdale Airport Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for an

existing restaurant location. This request is due to a change in the ownership of the business.

Location: 15000 N. Airport Drive

Reference: 37-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review and Permit Services Director, 480-312-7619,

E-mail: Jfisher@ScottsdaleAZ.Gov

7. D'atri's at the Scottsdale Airport Liquor License

Request: Consider forward a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 07 (beer/wine bar) State liquor license for an existing cappuccino/expresso bar. This request is due to a change in the ownership of the business.

Location: 15000 N. Airport Drive

Reference: 38-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review and Permit Services Director, 480-312-7619,

E-mail: Jfisher@ScottsdaleAZ.Gov

8. Jacqueline's Marketplace Cafe Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for an existing establishment. This restaurant previously operated with a series 07 (beer/wine bar) liquor license.

Location: 7303 E. Indian School Rd.

Reference: 40-LL-2003

Staff Contact(s): Jeff Fisher, Plan Review and Permit Services Director, 480-312-7619,

E-mail: Jfisher@ScottsdaleAZ.Gov

9. World Affairs Council contract for international visitor services

Request: Authorize Contract # 2003-119-COS, for \$27,540 in FY 2003-04 and \$28,230 in FY 2004-05, with the World Affairs Council of Arizona, Inc., to assist international visitors, provide protocol services and provide office space for the Scottsdale Sister City Committee.

Related Policies, References:

Contract #2001-091-COS, a similar contract, was approved by the City Council on June 18, 2001. That contract expires on June 30, 2003.

Staff Contact(s): Jeff Kulaga, Executive Assistant, (480) 312-7496, jkulaga@ScottsdaleAZ.gov;

Pat Dodds, Public Affairs Officer, (480) 312-2336, pdodds@ScottsdaleAZ.gov

COUNCILWOMAN LUKAS MOVED TO APPROVE CONSENT AGENDA ITEMS 1-9.
COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

REGULAR AGENDA

10. Los Arcos Redevelopment Agreement

Request: Adopt Resolution No. 6324 authorizing Contract No. 2003-115-COS, and approve Contract No. 2003-115-COS, a proposed Redevelopment Agreement between the City and Los Arcos Development, LLC for the redevelopment of the former Los Arcos Mall site at the southeast corner of Scottsdale Rd. and McDowell.

Related Policies, References:

- Council forms Los Arcos Redevelopment District -- 12/18/95
- Los Arcos Redevelopment Plan adopted -- 7/2/96
- Original Los Arcos Request for Proposals Issued -- 7/18/97
- Council Action on preferred Smith Group development option -- 2/5/02
- Council directs staff to proceed with negotiations with The Ellman Companies for the redevelopment of Los Arcos -- 2/18/03; reaffirmed by Council -- 3/3/03.

Staff Contact(s): David Roderique, Economic Vitality General Manager, 480-312-7601, droderique@scottsdaleaz.gov

Dave Roderique presented a brief slide presentation which has been outlined below.

Proposed Los Arcos Redevelopment Agreement
Economic Vitality Dept.
Introduction / Purpose

“Adopt Resolution No. 6324 authorizing Contract No. 2003-115-COS, a proposed Redevelopment Agreement between the City and Los Arcos Development LLC, for the redevelopment of the Los Arcos site at Scottsdale and McDowell.”

Proposed Redevelopment Agreement Key Terms and Conditions

1. The Development

- Power center anchored by Super Wal-Mart, Sam’s Club, and Lowe’s Home Improvement, plus about 40,000 square feet of small shop space/restaurants
- Two level parking structure, plus additional surface parking, totaling approx. 2,800 spaces
- Approx. 550,000 total sq. ft. of retail space – less than the old Los Arcos Mall (615k)
- Specific requirements the project must include – upgraded facades and materials, significant landscaping, plazas, pedestrian amenities, public art.
- The Developer is responsible for all on-site improvements; the City’s only upfront cost is to provide pro-rata share of McDowell streetscape improvements on public rights of way (which the City intends to do regardless of this project)

2. Zoning/Regulatory Process

- Project will be built within existing zoning and current parameters (such as height, setbacks).
- It will require 6 use permits (3 big box, 1 gas station, 2 auto tire/lube facilities).
- The Developer has also requested the Abandonment of 74th Street – proposed to remain open as a private road thru center.
- The project will also require Development Review Board approval, as well as all normal building permit processes.
- All of these other approvals would still be handled through their normal processes.
- Approval of this Redevelopment Agreement does not obligate the City in any way to these other approvals.

3. Construction Timing

- The entire project must meet the following deadlines:
 - 12/31/04: Anchors must have acquired their sites
 - 12/31/05: Project must be complete and open
- With the exception of 2 small pads (about 10,000 sq. ft.), which have up to 2 more years
- Failure to meet deadlines results in cancellation of the Agreement
- Only extension is for legal actions (up to 3 yrs.)

4. City Ownership

- After the completion of the improvements, but prior to any City payments being made, the City must receive title to the parking structure, surface parking lots, and the land they sit on
- Estimated value is \$23,260,000
 - \$11.75 mil. for the land (based on the City's appraisal)
 - \$11.51 mil. for the parking (based on pro-forma)
- City will also own roads/other infrastructure

5. Parking Lease

- All of the parking will be leased to the project with a series of options, on the following terms:
 - Yrs. 1 – 40: \$1 per month
 - Yrs. 41 – 50: \$400,000 per year
 - Yrs. 51 – 60: \$450,000 per year \$16 mil.
 - Yrs. 61 – 75: \$500,000 per year
 - Yrs. 76 – 99: Based on fair market value at time
- The project is responsible for all maintenance, repairs, insurance, utilities, security + operation for the term of the lease

6. City Financial Participation

- The City will share with The Ellman Companies sales tax generated directly by the project, up to a maximum of \$36,750,000, plus interest at a 7.18% rate, based on a sharing of 49% of the total sales tax paid to the City from this project for up to 40 years.
- This sharing is strictly performance-based – that is, only tax revenue that is generated at the site and paid to the City will be shared.
- Ellman will receive no guarantees from City
- The sales tax sharing is based on:
 - 69% of the General Fund portion (1.0%)
 - 0% of the Transportation dedicated fund (0.2%)
 - 0% of the Preservation dedicated fund (0.2%)

Equals 49% of the total sales tax
- Only sales taxes will be shared (including tax paid for retail, lease, and construction).
- No other taxes (such as property tax) will be shared with the Developer
- The City's obligation to share the sales tax will end at the earliest of the following:
 - 40 years has elapsed
 - The Developer has recouped \$36.75 million plus interest
 - The center closes, or two or more anchors cease operation for 4 years
 - The Developer defaults on any of the terms or conditions of the Agreement

7. Timing of City Payments

- Before the City begins making payments, the following must occur:
 - All three anchor stores must be complete and open
 - The shop space must be complete (with the exception of the two small pads – 10,000 sq. ft.)
 - All public infrastructure must be complete
 - The City must have received title to parking/land
- If part of the project opens early, those tax revenues will be held until the full opening
- Payments will be made quarterly based on actual tax revenues received by the City the prior quarter

8. Loss of Anchor Tenants

- If an anchor tenant closes, the Developer will not collect any tax sharing on that parcel (since it would no longer be generating sales taxes).
- If that space remains unoccupied for 4 years, that parcel is no longer eligible for tax sharing.
- If two or more anchors close and that space remains unoccupied for 4 years, then the entire Redevelopment Agreement may be cancelled.

9. Replacement Tenants

- If an anchor tenant closes, the Developer has the right to substitute an acceptable replacement – within 2 categories:
- “By-right” replacements are automatically accepted by the City if they meet specific criteria (national retailers with a minimum number of stores, minimum store size, minimum sales per sq. ft., investment grade credit rating, etc.).
- “By-approval” replacements are acceptable if specifically approved by the City.

10. Breach and Default

- In the event of a breach or default under the terms of this Agreement, the City has the right to cancel the Agreement (and make no further payments) if the Developer fails to provide acceptable remedies during the default notice period.
- The City also has the right to fix problems not taken care of, and reduce the payments by that amount.

11. Assignments

- The Developer has the right to assign all or part of this Agreement to a third party.
- Certain assignments are by right (such as the sale of parcels to the anchor tenants).
- All other assignments would require the specific approval of the City.

12. Land East of 74th Street

- The City has the right to use the East Parking Lot (approx. 3 acres east of 74th St. on the north side of Culver) for future development, so long as it replaces the surface parking with an equal number of spaces nearby.
- This land is adjacent to the Los Arcos Crossing shopping center

13. Required Features

- Examples of features specifically required at this project by this Agreement:
 - Accommodation for transit
 - Upgraded features and amenities
 - Free public parking
 - The requirement to provide the adjacent Los Arcos United Methodist Church with a permanent non-exclusive parking easement for the lot directly west of that Church

● Prohibited Features

- Examples of specifically prohibited features:
 - Sexually oriented businesses
 - Gambling
 - Bars/Nightclubs
 - Massage and tattoo parlors
 - Sale of used merchandise (thrift stores/pawn shops)
 - Overnight recreational vehicle parking
 - Day laborer solicitation
 - Advertising signs (other than tenant signage)

15. Legal Costs

- The Developer is responsible for all costs relating to legal action on this Agreement
- City will have no cost in legal actions unless it takes the position that the Agreement is not valid.

Analysis by Piper Jaffrey

- Key points:
 - City's balance sheet will need to reflect both the assets and contingent liabilities associated with this Agreement
 - No negative impact on the City's bond rating is expected
 - This Agreement eliminates the City's financial risk which was inherent in the earlier proposals that required City upfront contributions

Property Tax Issues

- The publicly owned portions of the site will be subject to GPLET (Gov't Property Lease Excise Tax) in lieu of property taxes
- It is unknown if property taxes + GPLET under this Agreement would be the same as under normal property taxes; estimates have suggested they will be within a close range
- THE GPLET statutes contain a provision whereby GPLET can be waived if a project is in both a Central Business District and a Redevelopment District
- Therefore, in order to insure that this waiver does not take place, we would recommend adding the following stipulation to the proposed Agreement:
"Both parties acknowledge that this project is not located within a Central Business District, and therefore the provisions of ARS 42-6209 relating to the temporary abatement of GPLET payments do not apply."

Status of Tenants

- The anchor tenants are committed but have not yet signed any binding agreements
- IF Council should approve this they intend to finalize their contracts with Ellman
- They have told us there are a number of minor deal points in the Redevelopment Agreement they would like to discuss
- If there are changes critical to the tenants that staff feels are reasonable, we might need to bring back an Amendment in Aug./Sept.

Options for Los Arcos

There are three key criteria that City desires (time, cost, product) which are mutually exclusive

The City has only three basic options available:

- Negotiate with the owner based on his general terms and conditions (advantage: time)
- Acquire the site from the owner – either through a direct purchase (\$60 million) or through condemnation (advantage: product)
- Wait for free market solutions (advantage: cost)

“Adopt Resolution No. 6324 authorizing Contract No. 2003-115-COS, a proposed Redevelopment Agreement between the City and Los Arcos Development LLC, for the redevelopment of the Los Arcos site at Scottsdale and McDowell, with the added stipulation relating to no abatement of the GPLET payments.”

Mayor Manross asked Mr. Steve Ellman if he would like a chance to speak on behalf of the proposal. He explained that we are here to talk about the southern part of the city, the Los Arcos neighborhood, and revitalization. He noted that discussions to revitalize the area have been ongoing for the past seven years. He pointed out that not one of the groups with negative comments have come up with a viable alternative to the proposed plan. He urged everyone to consider the neighborhood first when considering the proposed plan.

Bob Kaufman explained that a positive vote by Council would be the start of a new beginning. He summarized the terms of the agreement emphasizing the potential positive impacts of the proposed agreement. To date, private investment on the site is approximately \$60 million. Once the stores open, if approved tonight, the total private investment would be approximately \$122 million with the public investing nothing.

He assured the city that the project will be clean and it will be kept that way. He felt that the Los Arcos project would stop the trend of the “leakage” of revenue from the city to other communities. He noted that the property is a valuable retail corner and should stay that way.

He addressed the issue of sustainability of the proposed project. He expressed his belief that the Los Arcos Town Center has the ability to supply a product to draw customers and keep the stores going. He likened the town center to sustainability.

He showed a video of citizens speaking in support of the town center to emphasize the need for additional shopping in the southern part of the city.

In response to questions from Councilman Ortega, Mr. Kaufman explained that the private investment in the property is irrelevant since the project needs the support of the city to proceed. He explained that their company has provided backup to the city indicating their company’s investment in the property.

Councilman Ortega questioned the going rate for a big box store. Mr. Kaufman explained that any delay would result in further losses for the developer. He noted that the developer is trying to do everything possible to reduce the cost per square foot for the project.

Mayor Manross noted that she has questions regarding the interest rate stipulated in the agreement and would like additional information.

Councilman Littlefield suggested that the agreement be amended to prohibit loopholes that might allow the developer to avoid taxes on the parking garage. He noted that he would offer an amendment tonight

to stipulate that the city take ownership of the garage at the end of the project rather than up front to ensure that property taxes are paid on the structure.

Councilman Ortega explained that the resolution, as it is currently written, states that the project enjoys wide community support. He questioned the verbiage since he felt a public vote would be needed to determine if the project enjoys wide community support. He questioned if the portion of the agreement regarding legal costs applies to in-house counsel as well as contracted legal services. He also questioned the verbiage in the resolution stating that the project would not have a fiscal or detrimental impact on existing businesses in the area.

Mayor Manross opened public comment.

Patty Badenoch, 5027 N. 71st Place, stated her belief that this proposal isn't a good deal; however, it is time to get something done on the site. She asked Council to show good faith and at least allow code enforcement to do something with the property to clean it up. She stated her opinion that it is wrong to allow Mr. Ellman to continue to act like a slumlord.

Jim Heather, 6732 East Sheridan, thanked some Council members for taking a close look at the project and questioned why other members support the project. He stated opposition to the subsidy and his opinion that the proposal isn't good for the city.

Mary Henkenius, 7218 E. Latham St., stated her belief that the city must take a look at this part of the city. She stated her support of the project since the neighborhood needs the shopping. She questioned how the residents are supposed to have hope for their community. She asked that Council approve the project to allow shopping to help revitalize the area.

Amy MacAulay, 8738 East Highland Ave., stated that she is a resident of south Scottsdale. She spoke in opposition to the project since she didn't believe it is the best possible project for the area. She urged city officials to support the staff in continued negotiations and enforce stipulations in the agreement. She suggested that the project include a connection from the Indian Bend Wash to the cross cut canal.

Donald M. King, 831 N. 85th Place, stated his support for the project. He explained that regardless of the proposal for the area, someone would oppose it. Everyone wants to criticize the proposal without offering any solutions. He stated that the project would serve as a catalyst for other redevelopment in the area. He questioned why other developers would submit proposals for development of the site when Mr. Ellman owns the land. He stressed that most of the businesses in the area support the proposed project since they felt that the project would bring more shoppers to the area.

Juris Kursulis, 519 N. 72nd Place, explained that he is a long-term resident of the Los Arcos area of the city. He spoke in support of the proposed project. He questioned why the Mayor isn't supporting the plan since shopping is needed in the area.

Naomi M. Jones, 6743 E. Moreland St., stated her support of the project since she is sick and tired of driving to shop.

Rick Kidder, 7373 Scottsdale Mall, spoke as a representative of the Scottsdale Area Chamber of Commerce. He stated that the chamber supports private property rights; however, this is not an ordinary proposal due to the large subsidy. He stated that the chamber conducted its own survey regarding the proposal with the majority of citizens responding in opposition to the proposed project with the subsidy. He stressed that the proposed subsidy is well beyond the bounds of common sense or economic

development. He urged Council to delay the decision and exercise good judgment until the people can decide on the proposal.

Peter J. Wurts, 7017 E. McDowell Road, stated that he has operated retail businesses within the city for many years. He noted that he is addressing the citizens since it is people who make a viable business. He stated his belief that the proposed project is a very viable business that will bring businesses to the area. He addressed the issue of the subsidy since he felt it is an investment in the future of the community.

Beverly A. Hall, 2514 N. 86th St., spoke in opposition to the proposal since the agreement doesn't require Mr. Ellman to do anything. She questioned if there is a shopping center that has lasted 40 years anywhere in the valley. She stated that she doesn't care what goes on the corner as long as the city "does it the right way".

Ida Frick, 1211 N. Miller Road, #207, spoke in support of the proposal. She stated her belief that people will frequent the proposed shopping center since the neighborhood needs the shopping.

Bruce A. Steele, 7426 E. Moreland St., stated that Papago Plaza has been in business 40 years. He pointed out that the southern part of the city has seen undesirable businesses opening in the area. He stressed that 40,000 voters support the project and urged Council to reflect on that when making their decisions.

Lida A. Stewart, 2627 N 74th Place, explained that she fought the Los Arcos hockey arena a few years ago and is now supporting the proposed project. She explained her belief that the shopping available in the downtown area is shameful. She felt the proposed project would help bring business into the area.

Gary Allen, 2221 N. 72nd Place, expressed support for the proposed project. He pointed out that Wal-Mart doesn't deserve the bad publicity it has received concerning this project. He noted that he generally opposes subsidies; however, felt the area has been neglected too long.

Dave Hochstrasser, 8346 E. Granada, spoke in favor of the proposed project. He felt it is long overdue and would provide much needed services to the area. He didn't believe it would hurt many of the businesses that currently exist in the area today. He stated his desire to see the area redeveloped into a quality area.

Tom Jelinek, 7425 E. Culver Street, spoke as the pastor of the Los Arcos United Methodist Church. He stated that his church has opposed the agreement in the past since it would have threatened the survival of the church. Although this proposal is an improvement, he felt that there are still several areas that remain unaddressed. He stated that possible construction on the southeast-parking parcel would impact the access, parking, and visibility for the church and threaten the survival of the congregation. He pointed out that the parking parcels have not been maintained in the past and is not occurring now. He explained that the city has advised the church to obtain a lawyer to ensure their concerns are addressed; however, noted that the city or the Ellman Companies would need to pay for the expense.

Tom Paige, 8914 N. 82nd Street, explained that he would like to think that this is not a "done deal". He stated his opposition to the agreement since the city knows very little about. He questioned if the big box stores will locate at the site since no binding agreement has been signed. He urged Council to vote no if they are not 100% certain that this proposal is right for the city. He stressed his opinion that the proposal is flawed.

Girley Reed, 7517 E. Culver, #426, simply stated that "we want" the project.

Jeffrey E. Adcock, 5900 E. Thomas Rd., Apt. D220, explained that he has seen the neighborhood decline over the years. He blamed the current Mayor and Council members since he felt they have turned their backs on the southern part of the city. He urged Council to approve the project and plan further beautification projects for the southern part of the city.

Kris Perry, 1822 N. Circle, Tempe, stated her belief that the area needs the retail. She felt the project would also help the northern part of Tempe and produce additional revenue for Scottsdale.

Darlene L. Petersen, 7327 E. Wilshire Dr., stated her support for the proposed project. She pointed out that the stores would provide additional jobs in the area. She noted that taxes would also be generated from the property. More importantly, the area would be getting shopping that is sorely needed. She explained that existing businesses would have to adjust to the competition the same way they adjust when other businesses close. She reminded everyone of the subsidies (totaling \$43 million) the city has provided to businesses in the past to illustrate that the subsidy is needed for the revitalization of the southern part of the city.

Vivienne Tyler, 7830 E. Camelback Rd., B-24/204, stated that there are 837 residents in her complex that would benefit from the city's bus system to the proposed shopping center. She stressed that she isn't worrying about 40 years from now since the shopping is needed now.

Bud Sampson, 7825 E. McDowell Rd., stated that the Los Arcos area has been a pet peeve of his for some time. He stressed his belief that the area businesses are struggling. He felt it is a shame that a viable project can't seem to move forward. He urged Council to do something tonight that would help the city.

Bob Vairo, 10040 E. Happy Valley Rd., #451, spoke as a representative for the Coalition of Pinnacle Peak. He noted that the plan is not a perfect plan; however, the city must play the cards they have been dealt. He explained that the city's only realistic option for the site other than the proposed plan is to condemn the property. He noted that the city does not have the funds for such an action. The site currently lies fallow producing no tax revenues. He stressed that there are no upfront costs to the city for the proposed project. He explained that over 70% of the citizens in the area support the project according to the figures printed in the local paper. He urged Council's support for the plan since it is time to put the issue behind us.

Sharon Morgan, 7304 E. McKinley St., stated that she is a long time resident of the city. She stressed that the issue tonight is about the future of south Scottsdale since the city must focus on bringing life back to the older areas of the city. She noted that revenue sharing would bring a better project to the area. She stated her belief that the city must take care of the few remaining businesses in the area, provide incentives to bring in new businesses, and support homeowners. Without action, the problems in the area will snowball. She stressed that this is not the perfect plan; however, one doesn't exist. She urged Council to support the project.

Ramona Livingworth, 7505 E. Culver, #106, spoke in support of the project. She stated that there are 125 senior citizens in her neighborhood that would benefit from the proposed project.

Carol Hoffman, 7529 E. Culver, #527, stated her support of the project. She explained that the neighborhood deserves a break. She urged Council to support the plan.

Lyle Wurtz, 6510 E. Palm Lane, expressed resentment that Mr. Ellman is trying to buy Council votes. He displayed various mailings that were sent to residents from the Ellman Companies naming various Council members in favor and opposed to the proposed project. He stated opposition to the project and the subsidy while stressing that the city must stop subsidies. He pointed out that the city has invested in the northern part of the city while the southern part of the city is deteriorating.

Merrill Gindlesperger, 6418 E. Edgemont Ave., emphasized his opposition to the proposed project. He questioned why the city could give \$36 million away to a developer while the city couldn't finance a municipal fire company. He stressed that city services are being reduced while the city is giving away tax dollars to developers. He explained that he doesn't oppose the stores but strongly opposes the subsidy.

Jack Stein, 8403 E. Makenzie, pointed out that the city isn't giving the developer anything since the money would be generated from the site. He stressed that the project would help generate business for the area. He complemented Mr. Ellman since he felt this would be good for the city.

Sharon Oberritter, (no address given), explained that she is against the subsidy for the Wal-Mart store. She pointed out that she lives close to a Wal-Mart store and has a problem with abandoned shopping carts in her neighborhood. She pointed out that the old mall is out of business since citizens didn't support them.

Christine Schild, 10849 E. Jasmine Dr., spoke in opposition to the proposed agreement. She stated that studies have shown that the net increase in the city's income would be negligible. She stated her opposition to the proposed subsidy. She didn't feel this project would stop the decay of the area. She stated that the city's participation in this project would prevent the city from investing in other areas.

Nancy Cantor, 2529 N. 86th St., stated that the issue for her is redevelopment of the southern part of the city. No guidelines or guarantees are in the agreement that would ensure that the stipulations would be adhered to. She pointed out that no stipulations would be binding until the agreements are signed between the stores and Mr. Ellman. She urged Council to make the deal work without changing any of the proposed stipulations.

Rita Saunders Hawranek, 5605 N. 78th Way, explained that Council has had access to a great deal of material indicating sustainable revenues and growth. She stated her opinion that Mr. Ellman's proposal doesn't provide these things to the city; therefore is not a good plan. She urged Council to "bench" this plan until some honest documents are provided by the Ellman Companies.

Merry Anne Colin, 9142 E. Laurel Lane, stated her belief that the city's reputation is on the line here. She noted that tax subsidy should be used for the public good. She questioned if the city should interfere with the developer's right to develop his property as he sees fit. She asked why the city doesn't rescue homeowners who lose their property for back taxes instead of subsidizing Mr. Ellman.

Shirley A. Colin, 9345 N. 92nd St., #117, stated her opposition to the proposed subsidy. She explained that she wants her money spent where she wants to spend it so if a lawsuit moves forward regarding this project, she would sign on.

Robert Will, 6306 E. Catalina, spoke in support of the project. He urged Council to drive around the neighborhood and see that the project is needed to help revitalize the area. He stressed that this project should only be the first step in the revitalization of the area.

Lisa Haskell, 2400 N. 71st, #2400-L, read a letter in support of the proposal since the author felt the project is needed in the area. Holding out because of the cost would further delay construction with no guarantees that a better project would move forward.

Terry Fritsch, 8211 E. Garfield St., J-203, explained his belief that the area deserves this project. He noted that the city and other communities have all given out subsidies in the past. He expressed his desire for the center to move forward.

Amber Mundar, 3095 N. 86th Street, stressed her support for the proposal since the Los Arcos area is lacking in day-to-day amenities such as shopping.

Michael Merrill, 8713 E. Vernon Ave., urged Council to make sure that the big box stores sign a binding agreement before the city moves forward.

Representative Colette Rosati, 6040 E. Jenan Drive, stated her belief that this project would be a gross misuse of tax money. She stated that tax money could be better spent over the next forty years. She recommended that Council “just say no”. She noted that an investment is when someone takes their personal money to invest for profit. She cautioned everyone that this proposal is a forced investment.

Barbara Cawthorne, 8720 E. Forest Dr., stated that citizens are waiting for the redevelopment of Los Arcos, although she questioned the subsidy since she felt it is unnecessary. She noted that the subsidy seems to reimburse the developer for past expenditures.

Larry Heath, 8608 E. Gail Rd., stated that there are two important parts of the issue: the subsidy and the best use of the property. He stated that small businesses like to locate next to larger projects since they benefit from the traffic to the larger stores. He questioned where a resident in the southern part of the city shops for home improvement supplies. He stated his belief that retail on the site would work and locate without subsidy.

Carl Brown, 7549 E. Polk Street, spoke in support of the proposed project.

Nancy Dallett, 6286 E. Catalina Drive, thanked Council for their service. She questioned if big box centers would have a long-term impact on the area. She felt sorry that things are so desperate that the city is considering this proposal. She felt it is important to support a project that would provide a sustainable, unique project in the city. She urged the city not to give any more subsidies.

Jim Wellington, 8302 East Cambridge Ave., stated his opinion that the previous mall had a lot of attractive stores; however, people still drove by instead of shopping there. He felt the city’s options are limited since the retail at the site must attract people who are willing to spend money. He questioned the local competition since some existing businesses have agreements that limit what can be built on the site. He stressed that what is built on the site must generate revenue which he felt Wal-Mart and Lowe’s would do.

Joan Baron, 8325 E. Monte Vista Rd., explained that she sees the southern part of Scottsdale as having a great opportunity. She stressed that great projects take patience. She urged Council to consider if this project shows great vision. She stated that the city must create something that brings people to the area and felt a Wal-Mart wouldn’t do that.

Jodi Paulsen, 8630 E. Dianna Dr., noted bad experiences she had while recently taking photographs at a local Wal-Mart. She displayed several photographs of the undesirable impacts of various Wal-Mart

stores and local businesses in the areas. She stressed that there is no way to ensure that the proposed project won't have the same impacts on the southern part of the city.

James Getty, 2647 N. 73rd Place, stressed that tonight's decision would impact the city for many years to come. He questioned what stipulations would be in place to protect the neighborhood and how they would be enforced. He pointed out other projects that had stipulations that did not protect the community.

Mary F. King, 831 N. 85th Place, stressed that, in the past, taxpayers made investments in the city to help make the city better. She explained that the southern area of the city doesn't have any more time. South Scottsdale must be turned around now or the area will turn into a slum. She stressed that the area needs the project now.

Louis A. Jehmitt, 8525 E. Mulberry, explained that his issue is with the level of the subsidy. He felt the amount would set a regional policy where other developers would request the same treatment. He urged Council to consider Councilman Littlefield's concern about the parking garage and the Mayor's concern over the interest rate.

Mayor Manross closed public testimony. An additional thirty cards were received in favor while twenty-two cards were received opposing item 10 from citizens who did not wish to speak or submitted cards after public testimony began.

In response to questions from Mayor Manross, Mr. Roderique explained that the interest rate factor was based on the fact that the developer would be borrowing money to develop the center. It is the reflection of current market trends for this type of loan reflecting the risk factor involved. The rate is different than what is available for residential loans. Regardless of the quarterly computation and payments, the payment structure remains at 7.18% interest rate on an annual basis.

Councilman Ortega pointed out that he requested a financial impact study on the area. He noted that basically, there are currently sales of \$200 million in the area, which are expected to double with this proposal. Mr. Roderique confirmed that the financial impact study was not researched and provided. He explained that the estimated sales figures are based on the stoppage of leakage of current sales (\$1.5 million) as well as the potential of adding additional sales from residents outside the city who are not currently shopping in the city.

Councilman Ortega noted that as a result of an additional \$200 million, it is estimated that \$2.8 million would be generated in additional sales tax. He felt that there is a \$1.3 million gap in sales estimates since area doesn't have the capacity to double in size. Mr. Roderique explained that the difference between the leakage would be generated from additional business brought into the area. He noted that this type of project has generally attracted other types of businesses in other communities.

Councilman Ortega questioned if any receipts were received from the Ellman Companies to indicate the owner's investment in the land. He questioned the note on the property that is not accruing interest. Mr. Roderique explained that documentation was received without specific receipts.

Councilman Ortega also questioned if there is wide community support as indicated in tonight's resolution. He pointed out that there is no factual basis to have this type of language in the resolution. He questioned if it is possible to put the issue to a public vote to determine if there is wide community support. City Attorney Pennartz confirmed that Council is free to remove or revise the language if Council so desires before a vote is taken on the resolution. He noted that this issue is not a referable act since issues referred to the voters must enact something.

City Attorney Pennartz confirmed that the agreement includes a provision (section 16.19 page 41) for the Ellman Companies to pay all legal costs of any litigation that ensues relating to approval of the project. He noted that the incentive is not paid until tax revenues are generated since the incentive would be based on the previous quarter's tax revenues. There are two mechanisms included in the agreement to ensure that the legal fees are paid. First, the city could demand payment and secondly, the city could withhold revenues. He stressed that there are provisions in the agreement that allows the city to cancel the entire agreement in case of default.

Mayor Manross expressed additional concern over the interest rate that the proposal would provide to the developer. Mr. Roderique explained that there is nothing in the proposed agreement relating to the city funds.

Councilman Littlefield pointed out that the developer has been running a six-figure publicity campaign for this project. He stated that not a single advertisement originating from the Ellman Companies mentions the subsidy. He questioned the idea that this project is the will of the neighborhood since the campaign doesn't provide all the facts. He stated his opinion that the subsidy is obscene. He questioned if the project would revitalize the area. He explained that other Wal-Mart stores were built in areas that already had a vital economy. He stressed that the same developer that kept the lot in the condition it has been in for the last several years would enforce the stipulations in the proposed agreement. He also pointed out that the big box stores have not even agreed to the stipulations. He felt if the city signs the agreement, the developer would know that the city wants the agreement so much that it would agree to anything.

Councilman Littlefield questioned what the community would do once the big box stores close. He reminded everyone of the situation at the former Smitty's store when the store went out of business. He felt the agreement would postpone the redevelopment of the area for another ten or fifteen years. He stated his belief that Council must take a stand and oppose the agreement.

Councilman Littlefield confirmed that he still wishes to add an amendment concerning ownership of the parking lot.

Councilwoman Lukas requested assurances that the city could enforce the stipulations to prohibit negative impacts of the development. Mr. Roderique explained that the stipulations could be enforced due to the redevelopment agreement providing a higher level of enforcement than would normally be available to the city.

In response to additional questions from Councilwoman Lukas, Mr. Roderique explained that it is difficult to determine the impacts of Wal-Mart on communities. Staff attempted to make this determination by researching other community's experiences; however, they were typically in rural settings. He explained that the big box stores did not wish to sign binding agreements with the developer until the city indicates that it is willing to move forward.

Councilwoman Lukas stated her belief that the time has come to put Los Arcos behind the city so the area can move forward constructively. She noted that this issue has divided the community and urged everyone to learn to work together. She explained that she has always remained committed to finding a solution to the Los Arcos redevelopment. She stressed that the area needs the investment and needs it now. She envisioned a vibrant neighborhood with vibrant retail businesses. She stated her belief that any delay in redeveloping the area would be detrimental. She briefly outlined the provisions of the agreement and stated her support since it would revitalize the area.

Councilwoman Lukas explained that the size of the subsidy was a concern to her, which is why she participated in the negotiation process. She noted that a portion of the revenue generated from the project must be used to encourage further reinvestment in the area. She also stressed that, through the proposed deal, an estimated \$14.5 million would be raised for the city's schools.

She noted that she and two citizens contacted 46 businesses along McDowell Road this weekend to determine their support or opposition to the project. Out of the 46 businesses that were contacted, 43 businesses stated their support.

She addressed the rumor that an ASU facility was planned for the site. She explained that she contacted officials from ASU who indicated that the rumor is unfounded.

Councilwoman Lukas stated her support of Council appointing a committee to address the revitalization effort and ensure that the issue is considered globally.

Councilwoman Lukas encouraged everyone to join hands to get the project done. She assured everyone that the decision is being made through extensive research, interviews, and involvement.

Vice Mayor O'Hearn explained that Council has been encouraged to re-think their positions and look at the issue objectively. He confirmed that he has done so and felt it is important that Council share their analysis with citizens. He identified five issues including appropriate use issues, economic issues, process related issues, impact issues, and non-issues that wouldn't normally be considered issues.

He noted his belief that this use is appropriate as indicated by research. He addressed the economic issues and felt that project is sustainable since there are viable replacements if one store goes out of business. He stressed that the site is not appropriate for offices or housing since they wouldn't address the key issue of the neighborhood needing retail stores. He noted that other uses are no more sustainable than retail.

Vice Mayor O'Hearn explained that if the proposed businesses go out of business, the "co-share investment" goes away. He stated his belief that in terms of uses, this project is a good use that is sustainable. He stressed that there is no economic risk in this proposal to the city or the city's taxpayers. He pointed out that the Ellman Development Companies is the only participant in the agreement that assumes any risk. He stated that the city's general fund would benefit more by receiving approximately one half of the town center's revenue than if a smaller project was built on the site. Economically, the proposal is a good deal for the city.

Regarding the process, Vice Mayor O'Hearn explained that the only way to know the issues involved in the negotiation process is to sit down with the parties involved. He stressed that a series of meetings are necessary in order for successful negotiations. He stated that opportunity was present for any Council member to step up and lead; no one was left out.

In terms of impact issues, Vice Mayor O'Hearn explained that no evidence has been provided to indicate that existing businesses would close if Wal-Mart is built on the site. He noted that some of the business owners in the area indicated that they aren't concerned with the additional competition. Regarding an explanation for the subsidy, he indicated that the property is unique. He noted that the city would finally be doing something for the neighborhood not subsidizing Wal-Mart or the developer.

Vice Mayor O'Hearn explained that it doesn't make any difference if Mr. Ellman has a partner or if he intends to sell his interest in the property. He stressed that the agreement would remain intact so these issues won't make any difference. He stated that the agreement has provisions for termination if the businesses don't remain open on the site.

In conclusion, Vice Mayor O'Hearn explained his opinion that the use is appropriate and economically viable. He stated that it is not an act of desperation but salvation.

COUNCILMAN O'HEARN MOVED TO ADOPT RESOLUTION NO. 6324, WITH THE ADDED STIPULATION RELATING TO NO ABATEMENT OF THE GPLET PAYMENTS, AUTHORIZING CONTRACT NO. 2003-115-COS, AND APPROVE CONTRACT NO. 2003-115-COS, A PROPOSED REDEVELOPMENT AGREEMENT BETWEEN THE CITY AND LOS ARCOS DEVELOPMENT, LLC FOR THE REDEVELOPMENT OF THE FORMER LOS ARCOS MALL SITE AT THE SOUTHEAST CORNER OF SCOTTSDALE RD. AND MCDOWELL. COUNCILWOMAN LUKAS SECONDED THE MOTION.

Councilman Ecton explained that there are always difference of opinions; however, it is unfortunate that there has been mud slinging. He read portions of emails he has received from citizens opposing the proposed project where Council members were labeled various derogatory names. He pointed out that other cities are providing subsidies and are taking business away from the city's businesses. He stressed that the tax revenue from this project is new money that the city doesn't currently receive. He stated his opinion that additional revenue (estimated \$2-3 million annually) may be needed to continue the services currently provided by the city. He pointed out that the residents of south Scottsdale deserve something better. Hopefully, the currently proposed project will help revitalize the area and provide additional jobs. He stated that this redevelopment project requires an investment to make it work.

Councilman Ortega agreed that the Los Arcos saga has been a challenge to everyone. He explained that everyone can choose to spend money in Scottsdale. He stated his belief that the proposed project would be supersaturating the site. He reminded everyone of the proposal that was defeated for the Galleria building several years ago and stressed that free enterprise took care of the situation. He pointed out that "saying no" works. He pointed out that LA Fitness is making a major investment in the area without an investment by the city. He stated that the city receives three times the tax revenue for every other business in the area; therefore, the impact would be greater if the existing businesses close.

Councilman Silverman stated his belief that this is the right project at this time since it will help the entire area by drawing new sales dollars to the areas and municipalities. He noted that surrounding businesses are in favor of the project. He stated his belief that the vast majority of neighbors support the project. He expressed concern over any significant changes to the agreement in the future. He stressed that the stipulations and provisions in the proposed agreement are extremely important to him. He stated that although he appreciates everyone's passion on the subject, he didn't see any need for the threats Council has received.

Mayor Manross thanked everyone for their participation, correspondence, and input. She stated her continued support for retail on the site. She noted that the city is unique; therefore, must revitalize its areas in its own way. She stressed that the property values in one of the southern zip codes within the city went up 57% in the last few years indicating that the area is still viable and has potential. She cited figures illustrating other city investment in the area. The southern part of the community is older and needs more attention. She explained that a detailed development plan is being compiled for the southern area of the city. She noted that the city is researching a financial tool to help the small businesses in the

city. She also explained that she contacted officials at ASU regarding the newspaper article; however, they confirmed that they are not interested in locating a facility on the site.

Mayor Manross explained that the only reason the property has sat vacant was that the property owner didn't wish to develop it. She recited the history of the site and details of the arena agreement. She stressed that it is not the fault of City Council or staff that the arena proposal did not work on the site. She stated that the condition of the site, the fliers, etc. all have been fully orchestrated by the developer to gain community support for his proposed project. She felt this project is a wonderful example of corporate welfare. She pointed out that the assumptions made regarding the agreement are based on the property value at \$60 million while the city's appraisal estimates its worth at approximately \$23 million.

Mayor Manross agreed that the property is unique and is only sitting like it is today because the property owner made that choice. She stressed that the city's risk is not financial; however, there are unintended consequences since the plan doesn't reflect the city's vision and general plan. She stated regret that Council appears to believe this is the best deal possible for the community. She questioned how the city would deal with development interests in the future.

COUNCILMAN ORTEGA MOVED TO AMEND THE MOTION TO REQUIRE THE ELLMAN COMPANIES TO PLACE AT LEAST ONE QUARTER OF A MILLION DOLLARS IN AN INTEREST BEARING ESCROW ACCOUNT WITHIN TWO WEEKS OF APPROVAL OF THE REDEVELOPMENT AGREEMENT TO HOLD THE REIMBURSE THE CITY FOR ANY LEGAL FEES. COUNCILMAN LITTLEFIELD SECONDED THE MOTION WHICH FAILED 3/4 (N.O, W.E., C.L., T.S.)

COUNCILMAN LITTLEFIELD MOVED TO AMEND THE PROPOSED CONTRACT TO TRANSFER TITLE OF THE PARKING STRUCTURE TO THE CITY AT THE END OF THE AGREEMENT. COUNCILMAN ORTEGA SECONDED THE MOTION WHICH FAILED 3/4 (N.O, W.E., C.L., T.S.).

COUNCILMAN ORTEGA MOVED TO AMEND THE MOTION TO STRIKE THE LANGUAGE IN THE RESOLUTION STATING THAT THE PROPOSAL ENJOYS "WIDE COMMUNITY SUPPORT". THE MOTION DIED FOR LACK OF A SECOND.

THE ORIGINAL MOTION CARRIED WITH A VOTE OF 4/3 (M.M., D.O., R.L.).

Public Comment - None

City Manager's Report - None

Mayor and Council Items - None

Adjournment

With no further business to discuss, Mayor Manross adjourned the meeting at 11:05 P.M.

SUBMITTED BY:

Ann Eyerly, Council Recorder

REVIEWED BY:

Sonia Robertson, City Clerk

C E R T I F I C A T E

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 2nd day of July 2003.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this _____ day of July 2003.

SONIA ROBERTSON
City Clerk